

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

KENNY HILL,)	
)	Civil Action No. 05-160E
Plaintiff,)	
)	Judge McLaughlin
vs.)	
)	Magistrate Judge Baxter
)	
JOHN LAMANNA, ET AL.,)	(Electronically Filed)
)	
Defendants.)	

**MOTION TO DISMISS, OR IN THE ALTERNATIVE,
MOTION FOR SUMMARY JUDGMENT**

AND NOW, comes Defendants, John Lamanna, et al, by and through their attorneys, Mary Beth Buchanan, United States Attorney for the Western District of Pennsylvania, and Albert W. Schollaert, Assistant United States Attorney for the same District, and pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6), respectfully move the Court to issue an Order dismissing, with prejudice, Plaintiff's complaint. In the alternative, Defendants move the Court to grant summary judgment in Defendants' favor pursuant to Federal Rule of Civil Procedure 56.

With regard to Plaintiff's claim for negligence, the Court does not have subject matter jurisdiction. Pursuant to the Discretionary Function Exception to the Federal Tort Claims Act, 28 U.S.C. § 2680(a), the United States of America has not waived its sovereign immunity for negligence actions when the alleged negligence is the result of a federal employee exercising or performing a discretionary function within the scope of his employment.

To the extent Plaintiff is attempting to raise any claims beyond the negligence claim, those claims should also be dismissed, as Plaintiff has not exhausted his administrative remedies, and the Court does not have subject matter jurisdiction over the claims.

A Memorandum of Law in support of this Motion is being filed simultaneously herewith and the contents therein incorporated by reference.

WHEREFORE, Defendants' respectfully requests that the Court issue an Order dismissing Plaintiff's complaint with prejudice or, in the alternative, granting summary judgment in Defendants' favor.

Dated: February 21, 2006

Respectfully Submitted,

MARY BETH BUCHANAN
UNITED STATES ATTORNEY

S/ Albert W. Schollaert
ALBERT W. SCHOLLAERT
Assistant U.S. Attorney
Western District of Pennsylvania
700 Grant Street, Suite 4000
Pittsburgh, PA 15219
(412) 894-7416
PA ID No. 23629

OF COUNSEL:
Douglas Goldring, Esquire
Assistant General Counsel
Federal Bureau Industries (UNICOR)
400 First Street, NW, 8th Floor
Washington, DC 20534

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within Defendant's Motion to Dismiss, or in the alternative, Motion for Summary Judgment and the supporting Memorandum of Law were electronically filed and/or served via First Class U.S. Mail on this 21st day of February, 2006, upon the following:

Kenny Hill
Reg. No. 17110-016
FCI Petersburg
P.O. Box 1000
Petersburgh, VA 23804

S/ Albert W. Schollaert
ALBERT W. SCHOLLAERT
Assistant U.S. Attorney